

9 FAM APPENDIX G, 600 PROCESSING VISA CASES WITH NATIONAL CRIME INFORMATION CENTER (NCIC) HITS

*(CT:VISA-822; 07-14-2006)
(Office of Origin: CA/VO/L/R)*

9 FAM 601 BACKGROUND

(CT:VISA-822; 07-14-2006)

Section 403(a) of the USA PATRIOT Act (Public Law 107-56) granted the Department of State "access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC III), Wanted Persons File (WP), and to any other files maintained by the National Crime Information Center (NCIC) that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file." Regulations (22 CFR 40.5, 41.105(b)(2) and 42.67(c)(2)) were published to implement this legislative provision on February 25, 2002 (67 FR 8477). An Memorandum of Understanding (MOU) with the Federal Bureau of Investigation (FBI) was signed on May 23, 2002. On June 1, 2002 the Department began adding records to Consular Lookout and Support System (CLASS) from the WP, the Deported Felons File (DF), the Foreign Fugitive File (FF) and the Violent Gang and Terrorist Organizations File (VGTO). In a second step, the Department added approximately 7 million subject records from the NCIC III database to CLASS. These records are an extract of the full NCIC dataset. The extract is designed to exclude U.S. citizens, as our visa lookout systems do not have a need for U.S. citizen data.

9 FAM 601.1 Federal Bureau of Investigation (FBI) Codes in Consular Lookout and Support System (CLASS)

(CT:VISA-822; 07-14-2006)

- a. FBI hits in CLASS are represented by the following codes:
 - NCIC III National Crime Information Center's Interstate

Identification Index

- WP NCIC Wanted Persons File
- DF Deported Felons File
- VGTO Violent Gang and Terrorist Organizations File
- FF Foreign Fugitives File

All of these codes are Category I CLASS codes.

- b. A list of the FBI offense codes and their meanings is available on the intranet. You can access this list from a link on the CA home page or by going to the following address: FBI offense codes.

9 FAM 601.2 Processing National Crime Information Center (NCIC) Hits

(CT:VISA-822; 07-14-2006)

- a. The NCIC III contains criminal histories. When post receives an application from a subject who is a positive match for an NCIC III record, before any visa may be issued, post must fingerprint the applicant, submit the prints to the FBI via National Visa Center (NVC) and wait for a response from NVC. If the response confirms that the applicant is the subject of the NCIC III record, post will receive criminal history information from the FBI. The Department receives the full criminal history information only when an applicant has been fingerprinted and his/her identity confirmed. You must fingerprint applicants where there is a positive match for an NCIC III hit, and where the applicant has not been found ineligible on independent grounds. You must submit fingerprints to obtain identity confirmation and the full criminal history even if the applicant admits a criminal history, and even though you may have some independent knowledge concerning the applicant's criminal history.
- b. You must enter an appropriate notation into the nonimmigrant visas (NIV) system for all applicants with FBI hits who require fingerprints. Note the action taken on the case (i.e., "fingerprints sent to NVC", or "waiting for further information from Legatt"). You should also type the appropriate code-such as PNCIII - in the applicant screen's "case tag" field for tracking purposes.
- c. After processing fingerprints, NVC sends an applicant's criminal history to post via courier. The FBI analyst at NVC can help you determine if there is active criminal justice system interest in the applicant and whether identity confirmation through fingerprints is possible.
- d. Enter the appropriate provisional (quasi) code for all applicants with

positive matches even if no fingerprints have been taken. For example, if you encounter an applicant with a positive match for a DF entry and you possess information on which to deny the visa under an unrelated ground of inadmissibility, you must still enter a "PDF" entry in CLASS, in addition to the entry for the other ground of refusal.

9 FAM 601.3 A-1, A-2, G-1 through G-4, NATO-1 through NATO-6 Applicants Not Subject to Fingerprint Requirement

(CT:VISA-822; 07-14-2006)

Do not fingerprint "A", "G", or "NATO" visa applicants (other than A-3, G-5, or NATO-7 applicants) who have an National Crime Interstate Identification Index (NCIII) entry.

9 FAM 601.4 Procedure to be followed for A-1, A-2, G-1 through G-4, and NATO-1 through NATO-6 Applicants, Who Have National Crime Interstate Identification Index (NCIII) Hits

(CT:VISA-822; 07-14-2006)

- a. Interview the applicant in person to obtain as much information as possible about the applicant's possible criminal history, particularly in the United States;
- b. Temporarily refuse the application under INA 221(g)(2) based on the need for additional information;
- c. If post has a Legatt, and that office is willing to assist, request a basic extract (offense, date, disposition of charge) of the subject's criminal record from FBI; and
- d. Submit a request for Advisory Opinion (AO) to the Department (CA/VO/L/A). The request must provide a detailed summary of any information you have been able to obtain regarding the reported offense including any court actions. Final action on the case must await the final AO determination.

9 FAM 601.5 Fingerprinting Applicants

(CT:VISA-822; 07-14-2006)

- a. You must examine the hit to determine if there is a match. If there is a match, fingerprinting of the applicant is required. The consular section takes fingerprints of visa applicants. Other sections of the Embassy may

also take fingerprints. Questions about physical security and access control for fingerprinting operations should be discussed with the Regional Security Officer (RSO). 9 FAM 42.67 contains general instructions on fingerprinting. More specific instructions can be found at the FBI site: Taking Fingerprints.

- b. Use the originating agency identifier (ORI) "USNHNVC1Z" to facilitate processing of the cards for nonimmigrant visa (NIV) applicants.
- c. The OCA field on the fingerprint card for all NIV cases must contain the three-letter post code and the control number for the visa case.
- d. When processing NIV cases do not use fingerprint card stock with the pre-printed ORI for immigrant visa (IV) cases (USNHNVCOZ).
- e. All fingerprint submissions **MUST** be sent to:

National Visa Center
Attn: Fingerprint Unit
32 Rochester Avenue
Portsmouth, NH 03801

- f. CA/EX/GSD will supply posts with fingerprint cards upon request. At post expense, posts may prefer to purchase fingerprinting kits using the inkless method from:

DACTEK International Inc.
Tel: 818-787-1901
Fax: 818-988-9776

Or:

SIRCHIE
Tel: 800-356-7311
Fax: 800-899-8181 or 919-554-2266

Both vendors accept purchases by U.S. Government credit card.

- g. Post must collect the appropriate fee from the applicant to process the fingerprints as indicated on the Schedule of Consular Fees.

9 FAM 602 SPECIAL PROCESSING FOR APPLICANTS OF ACTIVE INTEREST TO LAW ENFORCEMENT

(CT:VISA-822; 07-14-2006)

- a. When an applicant matches an FBI record for a wanted person (WP), a

foreign fugitive (FF), or a violent gang or terrorist organization (VGTOF) member, your primary responsibility is to notify concerned law enforcement agencies (LEAs) to see if there is active operational interest in the case. You must notify the RSO and Legatt immediately. In most cases, the RSO will take no action prior to receipt of results of fingerprint submission and any further information obtained by NVC from local law enforcement authorities.

- b. In some instances there may be active interest in seeking extradition of the subject. In other cases, there might be operational interest on the part of LEAs in allowing the subject to travel to the U.S. In either of these cases, post should not attempt to fingerprint the applicant, as this would alert the applicant to the active interest in the case on the part of criminal justice authorities.
- c. In the case of a VGTO hit, submit a Visas Donkey (or Visas Bear if the applicant is a diplomat). Send the Security Advisory Opinion (SAO) to the routine addressees.

9 FAM 602.1 Processing of Fingerprints for Wanted Persons (WP) and Violent Gang and Terrorist Organization File (VGTOF) Consular Lookout and Support System (CLASS) Hits

(CT:VISA-822; 07-14-2006)

Wanted Persons (WP) and Violent Gang and Terrorist Organization File (VGTOF) hits must have WP or VGTOF noted in the "reason fingerprinted" box on the fingerprint card. Once NVC completes the fingerprint check and has confirmed that the possible WP or VGTOF record is outstanding and the extradition limitations for the applicant are addressed, NVC will send post a memo of their findings along with the fingerprint results. In rare cases, posts will be contacted by NVC to provide additional case and biodata information to facilitate processing of the case. For applicants with VGTOF records, fingerprint confirmation will usually not be possible. In such cases post will need to process the case by submitting a Visas Donkey (or Visas Bear) SAO request. However, do not submit a Donkey (or Bear) request until NVC determines that the CLASS hit corresponds to the applicant.

9 FAM 602.2 Processing Deported Felon Cases

(CT:VISA-822; 07-14-2006)

- a. The deported felon file (DF) is based on Department of Homeland Security (DHS) data and post may have independent DHS lookouts on subjects with DF entries. The file contains records on convicted criminal

aliens who have been deported. You may possess lookout information for DF hits from DHS that establishes grounds for inadmissibility under the INA. You may use such information to deny an application without further special processing. Post must, however, keep statistics on such cases to account for denials linked to DF cases.

- b. In a case where there is a positive match for a DF hit, and where the applicant has not been found ineligible on independent grounds, fingerprinting is mandatory, except for diplomats. In such cases, follow the same procedure used for a NCIII hit as detailed above. If the applicant is the subject of the DF record, you will receive criminal history information from the FBI. Fingerprints are mandatory even if the applicant admits a criminal history, and even though you may have some independent knowledge concerning the applicant's criminal history.
- c. Fingerprints are also mandatory in cases refused under one of the grounds of ineligibility listed in INA 212(a) if the applicant is seeking a waiver of the ineligibility.

9 FAM 602.3 Identity Confirmation

(CT:VISA-822; 07-14-2006)

- a. If an applicant with an NCIC hit is fingerprinted and the applicant is not the subject of the record, process the case to conclusion. Identity confirmation through fingerprints may not, however, be possible for all NCIC file records.
- b. Although some NCIC files may not have associated fingerprint records, fingerprints should nevertheless be requested of all applicants who have a positive match with an FBI record in CLASS. If an applicant who has a match against an FBI record refuses to submit fingerprints the applicant must be refused 221(g) and a quasi ("P") refusal must be entered into CLASS. The RSO must still be notified about any applicant who refuses to submit fingerprints but who has a match in the Wanted Persons File (WP), Violent Gang and Terrorist Organizations File (VGTO) or Foreign Fugitive File (FF).
- c. In addition, if an appropriate quasi-code can be determined for cases where an applicant refuses to submit fingerprints, enter the code into CLASS. For example:
 - For Wanted Persons, Deported Felons or Foreign Fugitives: P2A1
 - For Violent Gang and Terrorist Organization members: P3B

Establish Category 1 files for such applicants and scan the application and supporting materials into the system.

9 FAM 603 IMMIGRANT, K3 AND V VISAS

(CT:VISA-822; 07-14-2006)

The FBI analyst at NVC runs NCIC checks on all immigrant, K3, and V visa applicants. The results of the NCIC III checks done by the FBI at NVC are to be considered definitive and valid for one year if the applicant has not been in the U.S. since the date of the check. If you have a possible NCIII hit on an IV, K3 or V applicant who has already been vetted by the FBI analyst at NVC, and the above conditions are met, you need not fingerprint and repeat the FBI clearance. However, you must repeat clearance procedures for IV, K3 or V visa applicants who show WP, FF, or VGTO hits in CLASS. This includes fingerprints, if required. You do not need to repeat clearance procedures for applicants who match DF records if you already have information on file regarding the deportation and predicate offenses as a result of the namecheck done through NVC. If you do not have such information and the applicant matches a DF entry, additional processing is required.

9 FAM 604 DETERMINING MATCHES

(CT:VISA-822; 07-14-2006)

- a. As with all Category I returns from CLASS, you must examine the hit to determine if there is a match. Unless the return can be ruled out as a result of significant differences between the applicant and the hit information, the return should be considered a match. NCIC III data is collected on subjects who are known to the criminal justice system and as a rule contain fairly complete biodata. In general, NCIC III matches should be fairly close to the name and date of birth (DOB) of the applicant as the biographic data for the subjects of these records is known to the criminal justice system. An NCIC III hit can be ruled out if the DOB is significantly different or if there is significant difference in the name or if the gender of the applicant is different. Adjudicating officers must take into account the fact that virtually all NCIC information has been entered by law enforcement authorities in the United States who may not be familiar with foreign naming conventions. Thus, given names, surnames, patronymics and matronymics may not be listed in the correct sequence.
- b. WP, FF, and VGTO records may not contain biographic data that is as complete as the NCIC III records. You must assess these returns the same way that you assess all Category I returns. Unless there are obvious differences in the biographic data, records should be considered a match.
- c. CLASS system extract records for FBI data contain the following

descriptive fields which can aid in determining whether a visa applicant is the subject of the record:

- Armed/dangerous
 - Race
 - Ht (height in inches)
 - Wt (weight)
 - Eye (eye color)
 - Hair (hair color)
- d. CLASS also includes a comment screen for WP, DF, FF, and VGTO hits that includes the following information:
- Offense code
 - Offense code translation
 - Originating agency
 - Miscellaneous identifying number

These comments indicate the nature of the offense and the name of the agency that placed the entry in NCIC. Miscellaneous identifying numbers preceded by AR indicate alien registration numbers. This data can help you determine if the applicant is in fact the subject of the NCIC entry.

- e. Process to conclusion applications from subjects with hits in NCIC who were cleared in the course of a previous application and have no new entries. You must use the date the NCIC record was updated in CLASS as a means of determining if the NCIC record was previously cleared or if it was entered after the most recent visa application.

9 FAM 605 HANDLING AND STORAGE OF FBI RECORDS

(CT:VISA-822; 07-14-2006)

Any information received from NCIC or in response to fingerprint checks is considered "Law Enforcement Sensitive" (LES). Only employees with a need to know can have access to LES information. These are embassy or consulate employees with direct visa processing responsibilities only. The RSO must brief all employees handling LES information in accordance with the Diplomatic Security (DS) paper "Requirements for the Protection of NCIC Criminal History Information as Law Enforcement Sensitive." Posts must follow the procedures in 9 FAM 42.62 PN3.5 for storage and usage of LES records in the context of immigrant visa (IV) applications. Posts must follow the same procedures for nonimmigrant visa (NIV) applications. You must

immediately report any incidents involving the mishandling of LES information to the RSO.

9 FAM 606 CLOK CABLES

(CT:VISA-822; 07-14-2006)

- a. When you determine (through fingerprint submission or other means) that an applicant with an FBI quasi ("P") code is not the person in the FBI record, you must have the quasi code removed. To do so, submit a CLOK cable on such individuals documenting the reasons for removal of the entry. The cable must state if the reason for removal is that the fingerprints did not match those on file for the subject.
- b. Do not send in CLOK cables regarding the FBI entries themselves. Handling individual inquiries is discussed in 9 FAM 608 below.

9 FAM 607 CASE NOTES

(CT:VISA-822; 07-14-2006)

Enter case notes in the remarks field of the NIV system to record actions taken whenever an applicant with an NCIC match is issued or refused a visa. These notes will be available worldwide via the Consular Consolidated Database (CCD).

9 FAM 608 APPLICANTS WHO QUESTION THE NATIONAL CRIME INFORMATION CENTER (NCIC) RECORD

(CT:VISA-822; 07-14-2006)

- a. If an applicant voices concerns over the applicability of a criminal history record, tell the applicant that the Department has no role in addressing such concerns. Our role is to determine if the applicant is in fact the subject of the entry and then to act accordingly on the information the entry may contain. Once the applicant has been determined to be the subject of the record by fingerprints or other means, you must consider the substance of the record as presented.
- b. Advise any applicant who questions the applicability or accuracy of a criminal history record that there is a mechanism for clarification of an NCIC record that can be found in 28 CFR 16.30 - 34. These regulations lay out a two-step process. The subject must first obtain the criminal history or "rap sheet" from Criminal Justice Information System (CJIS)

and after reviewing it should bring any alleged discrepancies to the attention of the agency that entered the information or may ask CJIS to forward the challenge to the agency that submitted the data. Details of this procedure are posted on the CA website at FBI records.